

FEDERAL ACQUISITION REGULATION (FAR)

The Federal Acquisition Regulatory Council (the Council) was established to assist in the direction and coordination of Government-wide procurement policy and regulatory activities in the Federal Government, in accordance with chapters 11 and 13 of title 41 of the United States Code. The Council maintains and issues the Federal Acquisition Regulation (FAR) to codify uniform policies for acquisition of supplies and services by executive agencies. Regulatory changes are issued under the statutory authorities granted to the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration.

The Council issues rules consistent with Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" (January 30, 2017), section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), and Executive Order 12866, "Regulatory Planning and Review" (September 30, 1993). Per the requirements of Executive Order 13771, the Council completed three deregulatory actions and one regulatory action in fiscal year 2019.

Deregulatory Actions:

- FAR Case 2017-009, Special Emergency Procurement Authority, implemented sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 to expand special emergency procurement authorities to facilitate defense against or recovery from cyber-attacks and certain other disasters.
- FAR Case 2019-006, Update of "Affiliates" and Section 8(a) Clauses, updated the definition of "affiliates" in the FAR, and deleted an obsolete requirement for contractors who are 8(a) Program participants to obtain written approval from the Small Business Administration and the contracting officer before subcontracting the performance of any contract requirements.
- FAR Case 2018-008, Definition of Commercial Item, implemented section 847 of the NDAA for FY 2018 to broaden the definition of commercial item. The new definition

includes non-developmental items sold in substantial quantities, on a competitive basis, to multiple foreign governments. This reduces the number of government unique terms and conditions applied to acquisitions of the non-developmental items.

Regulatory Action:

- FAR Case 2015-017, Combating Trafficking in Persons-Definition of “Recruitment Fees,” provides a definition of “recruitment fees” to further implement the FAR policy on combating trafficking in persons per Executive Order 13627, entitled “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” and title XVII of the NDAA for FY 2013 entitled “Ending Trafficking in Government Contracting.”

Regulatory and Deregulatory Priorities in the Upcoming Fiscal Year

The Council is planning to amend the FAR for both statutory and Administration policy initiatives in several key areas:

1. Streamline regulations and reduce burden, especially for commercial and commercially available off-the-shelf (COTS) items. Examples include the following.
 - FAR Case 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds, will increase the micro-purchase threshold (MPT) to \$10,000; increase the simplified acquisition threshold (SAT) to \$250,000; and make additional changes related to the thresholds. The increase in thresholds will allow the use of more streamlined procedures which reduces the time and effort needed to make an award. Some contractors will benefit from reduced contract compliance requirements.
 - FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts from Certain Laws and Regulations, will implement revisions to the FAR to exempt commercial and COTS items from laws identified by the Council or the Administrator for Federal Procurement Policy. This reduction will allow contractors to use existing commercial practices, reducing compliance costs from requirements unique to the Government.

- FAR Case 2018-014, Increasing Task-order Level Competition, will provide an exception to the requirement to consider price as an evaluation factor, for the award of services to be acquired on an hourly rate basis under certain indefinite-delivery indefinite-quantity contracts and Federal Supply Schedule contracts. Meaningful evaluation of cost and price takes place later, when task or delivery order proposals are evaluated. The exception will allow procurement officials to focus on establishing and evaluating non-price factors at the earlier contract award level, resulting in more meaningful distinctions among offerors.
2. Promote disclosure and open government. Examples include the following.
- FAR Case 2017-014, Use of Acquisition 360 to Encourage Vendor Feedback, will address soliciting contractor feedback on how well agencies are doing in awarding and administering contracts. This will improve the efficiency and effectiveness of agency acquisition activities.
 - FAR Case 2016-005, Effective Communication between Government and Industry, encourages agency acquisition personnel to talk to industry.
3. Support national security efforts, especially safeguarding Federal Government information technology systems. Examples include the following.
- FAR Case 2018-017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, prohibits the Government from procuring covered equipment and services produced or provided by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company and any subsidiaries or affiliates. The prohibition is implemented to protect Government information systems from threats.
 - FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment, will prohibit the Government from entering into a contract, extending or renewing a contract with a vendor

that uses in their supply chain any equipment, system, or service that uses covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company, to include any subsidiaries or affiliates.

- FAR Case 2017-013, Breaches of Personally Identifiable Information, will create contract clauses and regulatory coverage to address contractor requirements for a breach response consistent with the requirement outlined in the Office of Management and Budget (OMB) Memorandum, M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," section V part B.
- FAR Case 2017-018, Violation of Arms Control Treaties or Agreements with the United States, prohibits, with some exceptions, the heads of executive agencies from entering into, renewing or extending a contract for the procurement of products or services from any persons involved in activities that violate arms control treaties or agreements with the United States. The prohibition reduces potential threats to the security of the United States and our allies.

4. Improve small business opportunities with the Federal Government. Examples include the following.

- FAR Case 2016-011, Revision of Limitations on Subcontracting, will implement SBA's regulatory clarifications concerning the nonmanufacturer rule, and how much a small business may subcontract to a large business. These were inconsistent across small business programs, such as whether a HUBZone small business could subcontract to other HUBZone small businesses. This rule revises and standardizes these requirements from multiple FAR clauses down to two.
- FAR Case 2018-003, Credit for Lower-Tier Small Business Subcontracting will allow large businesses to receive small business subcontracting credit for subcontracts that their subcontractors award to small businesses.

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